

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X572

Date of Final Decision: 20 July 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer says the company failed to identify faults in its sewer causing sewage to enter his property. He says this took two years to resolve and the company then denied responsibility. He seeks that the company reimburse his insurance claim and excess in the sum of £2000.00.

Response

It did not identify any faults on its assets that could be the cause of the customer's sewage flooding and it carried out dye tests which showed the issue was a private one. It denies the claim.

Findings

The evidence shows the company provided its services to the standard to be reasonably expected.

Outcome

The company does not need to take any action.

The customer must reply by 17 August 2023 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- Two years ago, his property was affected by sewage escapes.
- When he contacted the company, it said it was an issue on his private property and so he sought resolution through his home insurance.
- The company later undertook some repairs to its sewer. However, when he challenged the company, it claimed this was just maintenance.
- He seeks that the company reimburse his insurance claim and excess in the sum of £2000.00.
- He has not made comments on the company's response.
- In comments on a preliminary decision the customer says the company did not line the sewage pipe properly the first time. Once it was properly lined the sewage stopped. The issue was not with his pipework.

The company's response is that:

- It undertook several investigations and CCTV surveys and found no faults on any of its assets, rather it found that the customer's issue was a private one.
- It decided to undertake some general maintenance work to the main sewer line to ensure the issues experienced by the customer were not related to its assets.
- After completing this work, the customer confirmed he continued to experience foul water running freely into his private manhole, demonstrating its assets were not the cause.
- It has a statutory duty to ensure an area is and continues to be effectually drained and to make provision for the emptying of these sewers. Only OFWAT can determine a breach of this duty.
- Further, sewerage undertakers are not generally liable for the escape of the contents of public sewers, in the absence of negligence. Negligence is a complicated issue of law.
- This application relates to the issue of legal liability and causation which are more appropriately dealt with by the issue of a county court claim and expert evidence.
- It denies the claim.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. I do not need to make a finding on the company's duties to ensure effective drainage and nor do I need to decide the company has been negligent to determine this matter. Rather I can consider whether the company has provided its services to the standard to be reasonably expected.
2. The company is responsible for miles of sewers and so it cannot be reasonably expected to regularly review every part of its system. However, one would reasonably expect the company to investigate upon a report of sewage flooding, determine if its assets were faulty and, if so, carry out repairs.
3. It is not in dispute that the customer reported sewage flooding in 2021. The company has provided a detailed chronology of its actions to investigate and identify the cause for this flooding within its defence. This includes a contemporaneous record showing it carried out dye tests to trace the source and found it was an issue on the customer's private assets.

4. I acknowledge the customer disputes this and says his insurer found otherwise. However, he has not provided any evidence in support. I also note the company says it reviewed a report from the customer's insurer and found no reference to its own assets being the cause or source of the flooding. I therefore do not consider it would be useful to ask for further evidence from the customer in this regard.
5. I must weigh up the parties' submissions and evidence to determine what happened on the balance of probabilities. On balance, I find the company's evidence more persuasive. Given the evidence that the sewage did not flow from the company's assets, I cannot say it was responsible for the sewage flooding experienced by the customer or that it failed to provide its services to the standard to be reasonably expected.
6. I therefore find the customer's claim is unable to succeed.
7. I have considered the customer's comment on my preliminary decision, however my findings remain the same for reasons explained above.

Outcome

The company does not need to take any action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 17 August 2023 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.




J Mensa-Bonsu LLB (Hons) PgDL (BVC)
Adjudicator